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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE CARLOS LOPEZ,

Defendant and Appellant.

F073203

(Super. Ct. No. BF160722A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Colette M. Humphrey, Judge.

Kelly C. Martin, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Lewis A. Martinez and Louis M. Vasquez, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Peña, Acting P.J., Meehan, J. and Black, J.†

† Judge of the Fresno Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Defendant Jose Carlos Lopez contends on appeal that the trial court erred in imposing penalty assessments attached to a criminal laboratory analysis fee (lab fee) and a drug program fee (program fee). In response to defendant's letter, the trial court struck the lab fee penalty assessment, and defendant now asks that we, likewise, strike the program fee penalty assessment. Disagreeing with defendant's view of the law, we reinstate the lab fee penalty assessment and affirm the judgment as so modified.

PROCEDURAL SUMMARY

On September 25, 2015, defendant pled no contest to transportation for sale of 14.25 grams or more of heroin (Health & Saf. Code, § 11352, subd. (a);¹ Pen. Code, § 1203.07, subd. (a)(1)); count 2). He admitted having suffered two prior strike convictions (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)(1)) and having served one prior prison term (Pen. Code, § 667.5, subd. (a)).

On December 14, 2015, the trial court sentenced defendant to seven years in prison. The court ordered defendant to register as a narcotics offender (§ 11590). The court imposed various fines and fees, including a \$50 lab fee (§ 11372.5, subd. (a) (hereafter § 11372.5(a)),² plus \$155 in related penalty assessments, and a \$100 program

¹ All statutory references are to the Health and Safety Code unless otherwise noted.

² Section 11372.5(a) provides: "Every person who is convicted of a violation of Section 11350, 11351, 11351.5, 11352, 11355, 11358, 11359, 11361, 11363, 11364, 11368, 11375, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, 11382, 11383, 11390, 11391, or 11550 or subdivision (a) or (c) of Section 11357, or subdivision (a) of Section 11360 of this code, or Section 4230 of the Business and Professions Code shall pay a criminal laboratory analysis fee [lab fee] in the amount of fifty dollars (\$50) for each separate offense. The court shall increase the total fine necessary to include this increment. [¶] With respect to those offenses specified in this subdivision for which a fine is not authorized by other provisions of law, the court shall, upon conviction, impose a fine in an amount not to exceed fifty dollars (\$50), which shall constitute the increment prescribed by this section and which shall be in addition to any other penalty prescribed by law."

fee (§ 11372.7, subd. (a) (hereafter § 11372.7(a)),³ plus \$310 in related penalty assessments.⁴

On February 10, 2016, defendant filed a notice of appeal.

On November 16, 2016, defendant filed a letter with the trial court pursuant to *People v. Fares* (1993) 16 Cal.App.4th 954 and *People v. Clavel* (2002) 103 Cal.App.4th 516, requesting that the court strike the penalty assessments attached to the lab fee and the program fee on the ground that the fees were not penalties to which the assessments could attach. On November 18, 2016, the court agreed with defendant's argument under *People v. Watts* (2016) 2 Cal.App.5th 223 (*Watts*), and vacated the \$155 lab fee (§ 11372.5(a)) penalty assessment, but declined to vacate the \$310 program fee (§ 11372.7(a)) penalty assessment because it was not addressed in *Watts*.

DISCUSSION

Defendant now contends we should vacate the penalty assessments attached to the program fee (§ 11372.7(a)) because the lab and program fees are not fines, penalties, or forfeitures, and thus they do not trigger any penalty assessments. Defendant relies on *Watts, supra*, 2 Cal.App.5th 223 and *People v. Vega* (2005) 130 Cal.App.4th 183, and he urges us to depart from our decision in *People v. Sierra* (1995) 37 Cal.App.4th 1690 (*Sierra*). The People respond that defendant forfeited this issue, and that both penalty assessments were, nevertheless, proper and mandatory.

Penalty assessments apply to any “fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses” and increase such fines, penalties, or

³ Section 11372.7(a) provides: “Except as otherwise provided in subdivision (b) or (e), each person who is convicted of a violation of this chapter shall pay a drug program fee in an amount not to exceed one hundred fifty dollars (\$150) for each separate offense. The court shall increase the total fine, if necessary, to include this increment, which shall be in addition to any other penalty prescribed by law.”

⁴ The probation officer's report itemized the components of both sets of penalty assessments.

forfeitures by a specified amount. (E.g., Pen. Code, § 1464, subd. (a)(1); Gov. Code, § 76000, subd. (a)(1).) In *Sierra, supra*, 37 Cal.App.4th at page 1696, we concluded that the program fee (§ 11372.7(a)) is a fine or penalty to which penalty assessments are applicable.

In *People v. Martinez* (1998) 65 Cal.App.4th 1511, the court applied our reasoning to the lab fee specified in section 11372.5(a): “Under the reasoning of *Sierra*, we conclude ... section 11372.5, defines the [lab] fee as an increase to the total fine and therefore is subject to penalty assessments under [Penal Code] section 1464 and Government Code section 76000.” (*People v. Martinez, supra*, at p. 1522; see *People v. Sharret* (2011) 191 Cal.App.4th 859, 869-870 [because lab fee was punitive in nature, court was required to stay its imposition under Pen. Code, § 654]; *People v. Terrell* (1999) 69 Cal.App.4th 1246, 1257 [court required to impose state and county penalty assessments on lab fee]; *People v. Sanchez* (1998) 64 Cal.App.4th 1329, 1332 [abstract of judgment had to be amended to include lab fee imposed because it was “an increment of a fine”]; see also *People v. Talibdeen* (2002) 27 Cal.4th 1151, 1157 [dictum noting that the trial court “had no choice and had to impose” penalties upon the lab fee].)

Some courts, however, have held to the contrary. *Watts*, which itself noted that its holding was “contrary to the weight of authority,” held that the lab fee “is not subject to penalty assessments.” (*Watts, supra*, 2 Cal.App.5th at p. 226; see *People v. Vega, supra*, 130 Cal.App.4th at pp. 193-195 [lab fee is not punishment for purposes of Pen. Code, § 182, subd. (a)].)

We decline to reconsider *Sierra*. Furthermore, we agree with the court’s holding that the lab fee, like the program fee, is a fine or penalty that is subject to penalty assessments. Accordingly, in defendant’s case, the penalty assessments on both the program fee and the lab fee were properly imposed.

DISPOSITION

The lab fee (Health & Saf. Code, § 11372.5, subd. (a)) penalty assessment of \$155 is reinstated. As so modified, the judgment (including the program fee (Health & Saf. Code, § 11372.7, subd. (a)) penalty assessment of \$310) is affirmed. The trial court is directed to amend the abstract of judgment and to forward certified copies to the appropriate entities.